

Carbon taxation and the Oregon Constitution
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It is likely that Article IX, § 3 and Article VIII, § 2 (1)(g) of the Oregon Constitution will limit the policy choices for a carbon taxation system in Oregon. There are three primary concerns about how these sections allocate revenue and limit taxation; however, there may be approaches that would not require amending the constitution.

First, § 3a of Article IX states that revenue from taxes on motor vehicle fuel and use must be used for specified transportation expenditures.¹ Few, if any of these expenditures would promote greenhouse gas emission reductions. However, § 3a (2)(a) notes that this revenue “may also be used for the cost of administration *and any refunds or credits*² authorized by law” (Our italics). Thus, if a new tax credit or refund were created by the legislature, it appears that revenue could be refunded to the people, rather than directed to the State Highway Fund.³ This could align with the “tax and dividend” approach to pricing carbon emission externalities in a “revenue neutral” manner.

Second, § 3b of Article IX states that tax rates on oil and natural gas shall not exceed six percent of the market value of each resource, with the exception of taxation covered under § 3a⁴ (above). If § 3b is interpreted to apply to all oil or natural gas used in Oregon, rather than produced in the state, this limit on oil and natural gas taxes would apply to more than 1/3 of Oregon’s carbon dioxide (CO₂) emissions.⁵ Furthermore, according to Article VIII, § 2 (1)(g), revenue from taxes on oil and natural gas outside of the scope of § 3 accrue to the Common School Fund.⁶ However, similar to § 3a (2)(a) of Article IX, there is the opportunity to refund this revenue if “*any refunds or credits*” are designated by law, see endnote 6.

Third, if significant tax revenue from oil and natural gas sources was directed to school funding, this might free up funding from the general fund for the purpose of reducing emissions.

Although the above approaches for reallocating revenue appear feasible, there are some unanswered questions. Oregon courts have sparsely interpreted Article IX, § 3b, particularly its interaction with Article VIII, § 2 (1)(g); thus, we recommend that further research and outreach to the Oregon Department of Justice and other qualified entities is necessary. We believe that the following questions need clarification:

- 1) Do Article VIII, § 2 (1)(g) and Article IX, § 3b apply differently to in-state and out of state sources of oil and natural gas?⁷
- 2) How would the taxation rate on oil and natural gas function given the fluctuating market value of those resources?
- 3) Who would be eligible for tax credits addressing Article VIII, § 2 (1)(g) and Article IX, § 3 (2)(a) (e.g. payees of fuel tax, tax payers in general, or the general public)? If eligibility was restricted to fuel tax payers, a refund would be pointless.
Some or all of these questions may already be understood by other researchers of this topic.

Several bills in the 2013 legislative session (which did not progress forward) proposed a carbon taxation system (HB2497, HB2792, and HB2874). However, these bills did not create tax credits or

refunds (with the exception of a tax credit for forestry carbon offsets in HB 2792), but instead chose to direct revenue in the manner prescribed by Article VIII, § 2 (1)(g) and Article IX, § 3a.

A brief effort to locate the specialist behind the language constructs in these bills has not yet met with success. Oregon SB 306 (signed into law in 8-14-2013) creates a study group to discern the prospects of a carbon tax for Oregon, which presumably includes these constitutional issues. We recommend that further understanding of the constitutional limitations discussed above involve locating the expert(s) who worked on the House bills, or waiting for the legislatively created study group to use its mandate to more comprehensively settle these questions.

Please contact PolicyInteractive with questions or suggestions: info@policyinteractive.org or 541 726 7116.

¹ “(1) Except as provided in subsection (2) of this section, revenue from the following shall be used exclusively for the construction, reconstruction, improvement, repair, maintenance, operation and use of public highways, roads, streets and roadside rest areas in this state: (a) Any tax levied on, with respect to, or measured by the storage, withdrawal, use, sale, distribution, importation or receipt of motor vehicle fuel or any other product used for the propulsion of motor vehicles; and (b) Any tax or excise levied on the ownership, operation, or use of motor vehicles.” Or Const, Art IX, § 3a. *See also Auto. Club of Oregon v. State*, 314 Or 479 (1992) (holding that use of revenue from underground storage tank assessment and vehicle emission fee were unconstitutional violations of Article IX § 3a).

² *See* <http://www.oregon.gov/dor/PERTAX/personal-income-tax-overview/pages/credits.aspx> (listing tax credits available in Oregon).

³ Based on this research and consultation with constitutional professor Roberta Mann from the University of Oregon School of Law, a carbon “fee and dividend” approach may be the only way to circumvent vehicle-based revenue allocation to highway infrastructure.

⁴ “Any tax or excise levied on, with respect to or measured by the extraction, production, storage, use, sale, distribution or receipt of oil or natural gas, or the ownership thereof, shall not be levied at a rate that is greater than six percent of the market value of all oil and natural gas produced or salvaged from the earth or waters of this state as and when owned or produced. This section does not apply to any tax or excise the proceeds of which are dedicated as described in sections 3 and 3a of this Article.” Or Const, Art IX, § 3b.

⁵ According to my calculations – based on U.S. Energy Information Administration data (http://www.eia.gov/environment/emissions/state/state_emissions.cfm) – natural gas use accounted for nearly 30% of Oregon’s CO₂ emissions in 2011, with more than 97% of those emissions coming from outside of the transportation sector. Also, around 10% of CO₂ emissions from petroleum products were emitted outside of the transportation sector. In total, 12.7 million metric tons of CO₂, or around 35% of Oregon’s total CO₂ emissions in 2011, appear to fall outside of the scope of Article IX, § 3a, and are thus subject to the taxation limitations of Article IX, § 3b.

⁶ “(1) The sources of the Common School Fund are: (g) After providing for the cost of administration and **any refunds or credits** authorized by law, the proceeds from any tax or excise levied on, with respect to or measured by the extraction, production, storage, use, sale, distribution or receipt of oil or natural gas and the proceeds from any tax or excise levied on the ownership of oil or natural gas. However, the rate of such taxes shall not be greater than six percent of the market value of all oil and natural gas produced or salvaged from the earth or waters of this state as and when owned or produced. This paragraph does not include proceeds from any tax or excise as described in section 3, Article IX of this Constitution.” Or Const, Art VIII, § 2.

⁷ Oregon has no documented in-state oil production and very little natural gas production. *See* <http://www.eia.gov/state/rankings/?sid=OR#series/46> and <http://www.eia.gov/state/rankings/?sid=OR#series/47>